

REPRESENTATIVE FOR PETITIONER: Richard Jones, President Lanes Motel, Inc.

REPRESENTATIVES FOR RESPONDENT: Kirk Reller, Local Government Representative

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                         |   |                  |                          |
|-------------------------|---|------------------|--------------------------|
| Lanes Motel, Inc.       | ) | Petition No.:    | 59-002-17-1-4-01186-18   |
|                         | ) |                  |                          |
| Petitioner,             | ) |                  |                          |
|                         | ) |                  |                          |
| v.                      | ) | Parcel No.:      | 59-05-34-403-001.000-002 |
|                         | ) |                  |                          |
| Orange County Assessor, | ) | County:          | Orange                   |
|                         | ) |                  |                          |
| Respondent.             | ) | Assessment Year: | 2017                     |

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**Date 11/8/19**

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**I. Introduction**

1. In this assessment appeal, Lanes Motel, Inc. (“Motel”) pointed to some facts that were relevant to the value of its property. But it did not apply any generally accepted valuation approach to those facts or otherwise quantify how they affected the property’s value. Motel therefore failed to make a prima facie case for reducing its assessment.

**II. Procedural History**

2. Motel challenged its 2017 assessment. On September 24, 2018, the Orange County Property Tax Assessment Board of Appeals determined the following value:

| <b>Land</b> | <b>Improvements</b> | <b>Total</b> |
|-------------|---------------------|--------------|
| \$312,100   | \$677,900           | \$990,000    |

3. Motel responded by filing a Form 131 petition with us. On August 29, 2019, our designated administrative law judge, Jeremy Owens (“ALJ”), held a hearing on Motel’s petition. Neither he nor the Board inspected the property. Richard Jones, Motel’s president, and Kirk Reller, a local government representative, testified under oath.<sup>1</sup>
  
4. Motel offered the following exhibits:
 

|                         |  |
|-------------------------|--|
| Petitioner’s Exhibit 1: | Lanes Motel Revenue Report 2013-2018             |
| Petitioner’s Exhibit 2: | Two letters from Wayne Ferguson to Jones         |
| Petitioner’s Exhibit 3: | Letter and invoice from Robinson Auction Service |
  
5. The Assessor offered the following exhibits:
 

|                         |  |
|-------------------------|--|
| Respondent’s Exhibit 1: | Property record card (“PRC”) for the subject property  |
| Respondent’s Exhibit 2: | Form 115 determination   |
| Respondent’s Exhibit 3: | Wayne Ferguson Agency’s advertisement for subject property   |
| Respondent’s Exhibit 4: | PRC and sales disclosure form for tract that was split off from the subject property                             |
| Respondent’s Exhibit 5: | Aerial maps with local businesses marked and identified, aerial map without markings, and PRCs for three parcels |
| Respondent’s Exhibit 6: | Spreadsheet with data for local hotels/motels  |
| Respondent’s Exhibit 7: | Excerpt from IAAO Standard on Verification and Adjustment of Sales-2010  |
  
6. The record also includes the following: (1) all petitions, motions, and other documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **III. Contentions**

#### **A. Motel’s Contentions**

7. In 1975, the father in law of Motel’s president, Richard Jones, bought a property that included the 2.1-acre subject property and an additional 1.257 acres and accompanying

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<sup>1</sup> Orange County Assessor Linda Reynolds was sworn in but did not testify.

improvements that Motel's realtor, Wayne Ferguson, referred to as the "campground portion." The subject property has 40 motel units divided among three buildings. The buildings previously were above the floodplain, but they are now all at least four feet below it. Some are roughly eight or ten feet below the floodplain. *Jones testimony.*

8. According to Jones, various factors have conspired to lower the property's value, including competition from newer motels. Motel's revenues have declined each year since 2013, and it made a profit in only one of those years. *Jones testimony; Pet'r Exs. 1-2.*
  
9. Motel has tried to sell the property. In 2012, it listed the property, including the campground portion, for \$3 million. A year later, it lowered the price to \$1.7 million. In July 2014, Motel sold the campground portion for \$600,000. The buyer built a Dollar General store on it. Motel continued to list the remaining property for \$1.2 million, but it did not receive any serious offers. Although the buyer of the campground portion was interested in buying the subject property for \$800,000 and converting it into a convenience store and fast food restaurant, those plans fell through. *Jones testimony; Pet'r Exs. 2-3.*
  
10. On October 26, 2017, a local auctioneer offered the property for sale at auction. The auctioneer's invoice shows that the auction was advertised in two newspapers, although it does not say for how long. Jones testified that the auctioneer also advertised online, although he did not offer any particulars. According to Jones, roughly seven or eight potential buyers attended the auction, with a similar number showing up just to nose around. The auctioneer received a \$200,000 bid, which did not meet Motel's minimum requirement. Motel did not offer any evidence to show what the minimum bid level was. After the auction, Motel took out loans to renovate and upgrade the motel rooms, some of which were not rentable in their then current condition. *Jones testimony; Pet'r Ex. 2.*

11. Given the property's age and condition as well as competition from newer motels, Jones does not believe it will sell for anywhere near its listing price. While it could be converted to another commercial use, Jones estimated that a buyer would have to spend roughly \$500,000 to demolish the buildings and raise the land above the floodplain. Jones also testified that Motel would accept \$500,000 to walk away from the property. Motel therefore wants the assessment lowered to \$500,000. *Jones testimony and argument; Resp't Ex 2.*

#### **B. The Assessor's Contentions**

12. Because the Assessor calculated the subject property's assessment using state-promulgated guidelines, she argues that it is presumptively valid. She argues that Motel offered nothing to overcome that presumption. Although its gross-income data was helpful, the income capitalization approach estimates value by capitalizing net income. Without information about operating expenses, it is unclear what Motel's net income was. *Reller argument.*

13. The Assessor also believes that Motel's evidence about the auction lacks probative value. The property did not actually sell. Indeed, Ferguson explained that auctions for commercial property in the area generally were not very successful. In any case, a publication from the International Association of Assessing Officers ("IAAO") explains that auction sales tend to be at the low end of the price spectrum. According to the IAAO, for an auction sale to be considered a valid transaction, it must have been well advertised and attended. *Reller argument; Resp't Ex. 7; Pet'r Ex. 2.*

14. The Assessor's representative and witness, Kirk Reller, disagreed with Ferguson's characterization of the local commercial real estate market. Several nearby properties have sold or been developed since 2014. And since legal gaming began in the mid 2000's, the number of hotel and motel rooms in the area has more than doubled. *Reller testimony; Resp't Exs. 5-6.*

## IV. Conclusions of Law

### A. Burden of Proof

15. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d). Because the assessment actually decreased between 2016 and 2017, neither exception applies. Motel has the burden of proof.

### B. True Tax Value

16. Indiana assesses property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). The DLGF defines true tax value as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2.
17. Evidence in an assessment appeal should be consistent with that standard. For example, market-value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining

that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices).

### C. Analysis

18. Although Motel offered some relevant evidence, none of it was sufficient to establish the property's market value-in-use. Motel offered evidence regarding its gross income. That information is relevant when applying the income approach—one of the three generally accepted approaches for estimating a property's market value. But much more is required under that approach. We would need to know whether the income reflects market rental and occupancy rates. We would similarly need to know the property's reasonable operating expenses and an appropriate capitalization rate. See *Indiana MHC, LLC v. Scott Cnty. Ass'r*, 987 N.E.2d 1182, 1185 (Ind. Tax Ct. 2013) (explaining how to apply the income approach). Motel offered no evidence on those points.
19. Motel's other evidence is similarly incomplete. We have some information about its attempts to sell the property. Where a seller unsuccessfully markets a property for a reasonable time in a commercially reasonable manner, its asking price may set the upper limit of value. But that does not help Motel here. At all times, the subject property was listed for more than its assessment of \$990,000. As for the auction, Motel offered few details about the extent to which the auction was advertised and nothing to show whether the advertising was commercially reasonable for a property like the subject property. In any case, the auction did not result in a sale. The only bid was below what Motel established as its minimum, and we do not know what the minimum was.
20. Finally, the presence of nearby competitors, the condition of the improvements, and the land's location within a floodplain all might affect the property's value. But Motel offered nothing to quantify the extent to which they do so, much less to establish a value, or even a range of values, for the property. Motel therefore failed to make a prima facie case for lowering its assessment.

#### IV. Conclusion

21. Because Lanes Motel, Inc. failed to make a prima facie case for reducing its 2017 assessment, we find for the Assessor and order no change.

We issue this Final Determination of the above-captioned matter on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.